



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR part 52

[EPA-R09-OAR-2018-0413; FRL-9981-73-Region 9]

Revisions to California State Implementation Plan; South Coast Air Quality Management District; Stationary Source Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing action on a revision to the South Coast Air Quality Management District (SCAQMD or District) portion of the California State Implementation Plan (SIP). We are proposing a conditional approval of an update to provisions governing issuance of permits for stationary sources, including review and permitting of major sources and major modifications under part D of title I of the Clean Air Act (CAA). Specifically, the revision pertains to SCAQMD Rule 1325 – *Federal PM_{2.5} New Source Review Program*. We are taking comments on this proposal and a final action will follow.

DATES: Any comments must arrive by **[Insert date 30 days after publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2018-0413 at <http://www.regulations.gov>, or via email to R9AirPermits@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited from Regulations.gov. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other

information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “**FOR FURTHER INFORMATION CONTACT**” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Laura Yannayon, EPA Region 9, (415) 972-3534, yannayon.laura@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, the terms “we,” “us,” and “our” refer to EPA.

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I. The State's Submittal

A. *What rule did the State submit?*

Table 1 lists the rule addressed by this proposal with the date it was adopted by SCAQMD and submitted by the California Air Resources Board (CARB), the governor's designee for California SIP submittals. Rule 1325 contains the District's New Source Review (NSR) permit program applicable to new and modified major sources emitting fine particulate matter (PM_{2.5}) and PM_{2.5} precursors.

TABLE 1 - SUBMITTED RULE

Rule #	Rule Title	Amended	Submitted
1325	Federal PM _{2.5} New Source Review Program	11/4/16	5/8/17

On November 1, 2017, CARB's May 8, 2017 submittal of Rule 1325 was deemed to meet the completeness criteria in 40 CFR part 51, appendix V. Completeness criteria must be met before formal EPA review.

B. *Are there other versions of this rule?*

The current SIP contains a version of Rule 1325 – *Federal PM_{2.5} New Source Review Program*, approved into the SIP on May 1, 2015 (80 FR 24821). Consistent with the District's stated intent to have the submitted rule replace the existing SIP-approved rule in its entirety, EPA's conditional approval of the rule identified above in Table 1 would have the effect of entirely superseding our prior approval of the same rule in the current SIP-approved program.

C. *What is the purpose of the submitted rule?*

For areas designated as nonattainment for one or more National Ambient Air Quality Standards (NAAQS), the SIP must include preconstruction permit requirements for new or

modified major stationary sources of such nonattainment pollutant(s), commonly referred to as “Nonattainment New Source Review” (NNSR). CAA 172(c)(5).

SCAQMD Rule 1325 addresses NNSR permit requirements for major sources of PM_{2.5}. Rule 1325 has been amended to address SCAQMD’s reclassification from a Moderate to a Serious PM_{2.5} nonattainment area and to implement additional provisions pertaining to precursors, as promulgated in EPA’s rule entitled Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements (“2016 Implementation Rule”).¹

II. The EPA’s Evaluation and Action

A. How is the EPA evaluating the rule?

Under EPA’s 2016 Implementation Rule, which implements the D.C. Circuit court’s January 2013 decision in *NRDC v. EPA*,² areas classified as nonattainment for any PM_{2.5} NAAQS are required to comply with the parts of CAA subpart 4 section 189(e)³ that require the control of major stationary sources of PM₁₀ precursors (and hence under the court decision, PM_{2.5} precursors) “except where the Administrator determines that such sources do not contribute significantly to PM₁₀ levels which exceed the standard in the area.” The 2016 Implementation Rule amended the definitions of (1) Regulated NSR Pollutant with regards to PM_{2.5} precursors; (2) Major Stationary Source with regards to major sources locating in PM_{2.5} nonattainment areas classified as Moderate and Serious; and (3) Significant with regards to emissions of PM_{2.5} precursors. Rule 1325 is subject to these new regulatory requirements.

The SCAQMD is classified as a Moderate nonattainment area for the 2012 PM_{2.5}

¹81 FR 58010, August 24, 2016

² 706 F.3d 428 (D.C. Cir. 2013)

³ This requirement was codified in 40 CFR 51.165(a)(13). See 81 FR 58010, August 24, 2016.

NAAQS. On January 13, 2016,⁴ the SCAQMD was reclassified from a Moderate to a Serious PM_{2.5} nonattainment area for the 2006 PM_{2.5} NAAQS. The major source permitting threshold for a Moderate PM_{2.5} nonattainment area is 100 tons per year (tpy) of direct PM_{2.5} or any PM_{2.5} precursor, and 70 tpy for a Serious PM_{2.5} nonattainment area.

In addition, EPA has reviewed the submitted rule for compliance with: (1) the requirements for SIPs as set forth in CAA section 110(a)(2); (2) the requirements related to SIP revisions in CAA sections 110(l) and 193; (3) the requirements for stationary source preconstruction permitting programs in CAA section 173(a) through (c); and (4) the requirements related to the review and modification of major sources in 40 CFR part 51.165 that pertain to a PM_{2.5} nonattainment area classified as Serious.

B. *Does the rule meet the evaluation criteria?*

In our previous May 1, 2015⁵ action we evaluated Rule 1325 in accordance with the CAA and regulatory requirements listed in Section II.A of this preamble. In that action, we determined Rule 1325 satisfied the applicable requirements for a PM_{2.5} NNSR permit program. Below we discuss and evaluate the revised portions of submitted Rule 1325 to determine if the revisions meet current applicable requirements for a PM_{2.5} NNSR permit program.

Section (a) – Applicability, contains minor revisions to clarify that the rule applies to major polluting facilities that will emit PM_{2.5} or its precursors in areas federally-designated as nonattainment for PM_{2.5}. EPA finds these clarifying revisions approvable.

Section (b) – Definitions, has been revised to update: (1) the effective date of the referenced 40 CFR 51.165(a)(1) definitions; (2) the definition of Major Polluting Facility to

⁴ 81 FR 1514, January 13, 2016.

⁵ 80 FR 24821.

include a 70 tpy emissions threshold, effective upon the date of the EPA's approval of the November 4, 2016 amendments to Rule 1325; (3) the definition of Precursors to include volatile organic compounds (VOC) and ammonia, effective upon the date of the EPA's approval of the November 4, 2016 amendments to Rule 1325; and (4) the definition of "Significant" to include VOC and ammonia and specify a 40 tpy threshold. EPA finds these revisions approvable, as they are consistent with current applicable requirements for a serious PM_{2.5} nonattainment area.

The definition of Regulated NSR Pollutant was not revised to include VOC and ammonia as PM_{2.5} precursors. Because the definition for the term Major Modification relies on the definition of Regulated NSR Pollutant, Rule 1325 does not satisfy the requirement to include VOC and ammonia as PM_{2.5} precursors when evaluating if a project will result in a major modification, and it is therefore deficient.

Section (f) – Two Year Limit on Facility Exemption has been revised to lower the emissions threshold for this exemption provision from 100 tpy to 70 tpy, effective upon the date of the EPA's approval of the November 4, 2016 amendments to Rule 1325. The provision requires a source to aggregate its PM_{2.5} emissions from any permit actions that occur within a two-year period to determine if emissions exceed 70 tpy; if so, offsets are required for the aggregated emission increase. This provision requiring PM_{2.5} emissions to be aggregated is more stringent than CAA requirements. Therefore, EPA finds this more stringent provision acceptable.

Section (j) – Offset Exemptions for Regulatory Compliance has been added.

This provision allows the Executive Officer to exempt new or modified sources installed solely to comply with District, state or federal air pollution control regulations from the otherwise applicable offset requirements. EPA finds this new provision approvable.

In addition, other minor editorial or conforming edits have been made throughout the

rule. EPA finds these revisions approvable.

With respect to procedural requirements, CAA sections 110(a)(2) and 110(l) require that revisions to a SIP be adopted by the state after reasonable notice and public hearing. EPA has promulgated specific procedural requirements for SIP revisions in 40 CFR part 51, subpart V. These requirements include publication of notices by prominent advertisement in the relevant geographic area, a public hearing or notice of an opportunity for a public hearing on the proposed revisions, and a public comment period of at least 30 days.

Based on our review of the public process documentation included in the May 5, 2017 submittal, we find that SCAQMD has provided sufficient evidence of public notice and opportunity for comment and a public hearing prior to adoption and submittal of these rules to EPA.

Section 193 of the Act, which was added by the Clean Air Act Amendments of 1990, includes a clause providing in pertinent part: “No control requirement in effect, or required to be adopted by an order, settlement agreement, or plan in effect before November 15, 1990, in any area which is a nonattainment area for any air pollutant may be modified after November 15, 1990, in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant.” Since PM_{2.5} is a NAAQS adopted after 1990, there are no existing PM_{2.5} control requirements that would be subject to the provisions of Section 193 of the CAA. Therefore, for the purposes of our analysis of Rule 1325, we find that Section 193 of the CAA does not apply to this action.

III. Proposed Action and Public Comment

Because the revisions to Rule 1325 do not ensure VOC and ammonia emissions are evaluated to determine if a proposed project will result in a major modification, EPA cannot

grant full approval of this rule under section 110(k)(3) of the Act. However, in a letter dated June 26, 2018, the District committed to adopt and submit specific enforceable measures to address this deficiency. The District committed to submit these revisions to CARB within 11 months of the date of EPA's final action. In addition, in a letter dated July 16, 2018, CARB committed to submit the adopted rule revisions to EPA no later than 12 months from the date of EPA's final action. Accordingly, pursuant to section 110(k)(4) of the Act, EPA is proposing a conditional approval of the submitted rule. We are proposing to conditionally approve the submitted rule based on our determination that separate from the deficiency listed above, the rule satisfies the applicable requirements discussed in Section II.A of this action.

In support of this proposed action, we have concluded that our conditional approval of the submitted rule would comply with section 110(l) of the Act because the amended rule, as a whole, would not interfere with continued attainment of the NAAQS in the South Coast Air Basin. The intended effect of our proposed conditional approval action is to update the applicable SIP with current SCAQMD rules and provide SCAQMD the opportunity to correct the identified deficiencies, as discussed in their commitment letter dated June 26, 2018. If we finalize this action as proposed, our action would incorporate this rule into the federally enforceable SIP and be codified through revisions to 40 CFR 52.220 (Identification of plan) and 40 CFR 52.119 (Part D conditional approval).

If the State meets its commitment to submit the required measures within 12 months of the date of EPA's final action, Rule 1325 will remain a part of the SIP until EPA takes final action approving or disapproving any subsequently submitted SIP revision. However, if the District fails to submit a revision within the required timeframe, the conditional approval will automatically become a disapproval, and EPA will issue a finding of disapproval. EPA is not

required to propose the finding of disapproval.

We will accept comments from the public on this proposal until [Insert date 30 days after date of publication in the **Federal Register**]. If we take final action to approve the submitted rule, our final action will incorporate this rule into the federally enforceable SIP.

IV. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the SCAQMD rule listed in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available electronically through www.regulations.gov and in hard copy at the EPA Region IX Office (please contact the person identified in the “**FOR FURTHER INFORMATION CONTACT**” section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose

substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference,
Intergovernmental relations, Particulate Matter, Reporting and recordkeeping requirements.

AUTHORITY: 42 U.S.C. 7401 *et seq.*

Dated: July 24, 2018.

Michael Stoker,
Regional Administrator,
Region IX.

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